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ABSTRACT

Collective bargaining is the process of negotiating and administering a contract agreement between a union and the employing organization. Although the specific provisions of collective bargaining agreements vary from one school to another, the collective bargaining process, and negotiated contract generally, address the following issues: management rights, narrow grievance definition, no-strike provision, zipper clause, maintenance of standards, just cause, reduction in force, wages and benefits, and others. Negotiators use several tactics to improve their bargaining including counterproposals, tradeoffs, caucus, and costing proposals. In recent years, collaborative bargaining has become apparent. Collaborative bargaining focuses on ongoing problem solving throughout the school year rather than dealing with a buildup of issues presented at the bargaining table. (Contains 12 references.) (Author)(TEJ)

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Collective Bargaining in the Public Schools:

Issues, Tactics, and New Strategies

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Abstract

Collective bargaining is the process of negotiating and administering a collective bargaining agreement or negotiated contract between a union and the employing organization. Although the specific provisions of collective bargaining agreements vary from one school district to another, the collective bargaining process and negotiated contract generally address the following issues: management rights, narrow grievance definition, no-strike provision, zipper clause, maintenance of standards, just cause, reduction in force, wages and benefits, and others. Negotiators use several tactics to improve their bargaining including counterproposals, tradeoffs, caucus, and costing proposals. In recent years, collaborative bargaining has become apparent. Collaborative bargaining focuses on ongoing problem solving throughout the school year rather than dealing with a buildup of issues presented at the bargaining table.

Collective Bargaining in the Public Schools:
Issues, Tactics, and New Strategies

The labor union movement in the United States began in response to undesirable management practices in industry. It has spread to include employees in the public sector, such as teachers and government workers. Teachers represent the largest group of employees in an educational institution. Today, all but nine states have enacted statutes specifically establishing some rights of employees in public schools to bargain collectively with boards of education. Over 80 percent of the nation's teachers belong to either the National Education Association (NEA), which has over 1.5 million members, or the American Federation of Teachers (AFT), which has about half a million members (1).

A *union* is an organization of employees formed for the purpose of influencing an employer's decisions concerning conditions of employment. Union-management relations is the ongoing relationship between a group of employees represented by a union and management in the employing organization. The basis for any union-management relationship is *collective bargaining*, the process of negotiating and administering a collective bargaining agreement or negotiated contract between a union and the employing organization. Collective bargaining agreements specify the rights and duties of employees and management with respect to wages, hours, working conditions, and other terms of employment. It is collective in the sense that the employees, as a unit, select representatives from their membership to meet with management to discuss issues that need to be resolved. The union bargains on issues that represent the concerns of its membership. Management tries to advance the interests of the organization.

Bargaining Issues

Collective bargaining agreements are complex and often lengthy, written contracts that are legally binding on both management and the union(s) representing its employees. A recent agreement between the Chicago Board of Education and the Chicago Teachers' Association is over 250 pages long (2). Although the specific provisions of collective bargaining agreements vary from one school district to another, the collective bargaining process and negotiated agreement generally address the following issues (3, 4). (Because teachers make up the largest group of employees in schools, I will limit my discussion to teachers' collective bargaining agreements. It should be noted, however, that school administrators bargain collectively with other employee unions as well.)

Management Rights

During collective bargaining, unions strive to increase wages, protect job security, and improve the work conditions of employees. On the other hand, management tries to protect and clarify its rights as employer. Any rights not given to the union in the collective bargaining agreement are assumed to belong to management. These are called *management rights* . A strong management rights clause in the contract reinforces statutory rights of the board of education and aids in limiting the authority of an arbitrator in the grievance process. A common management rights clause is a lengthy list of specific management prerogatives including the right to supervise all operations; control all property and equipment; determine the size of the workforce; assign work to be done; introduce new methods, programs, or procedures; hire and fire employees; promote, demote, and transfer employees; and in general maintain an orderly, effective, and efficient operation.

Narrow Grievance Definition

A grievance procedure is a formal system by which contract disputes are expressed, processed, and judged. The definition of a grievance in a written collective bargaining agreement determines which employee complaints are subject to binding grievance arbitration. A *narrow grievance definition* that limits employee complaints to the specific written agreement is recommended. Such an approach does not preclude other complaint procedures. It does limit what a grievance arbitrator can decide during the written terms of the negotiated agreement in force.

No-Strike Provision

Federal law prohibits strikes by teachers. Most states have passed similar laws. Because teacher strikes occur despite the laws against them, additional protection can be gained through a *no-strike provision* in the collective bargaining agreement. Such a provision puts the union on record against strikes and involves the union in the enforcement of the laws prohibiting them. In addition, a no-strike provision usually permits management to impose monetary damages on teachers who engage in an illegal strike.

Zipper Clause

A *zipper clause*, or waiver provision, stipulates that the written agreement is the complete and full contract between the parties and that neither party is required to bargain on other items during the term of the agreement. The purpose of such a provision is to avoid continuing negotiations after the contract has been ratified; when coupled with a strong management rights clause, it limits the role of past practice used by grievance arbitrators.

Such a provision, however, does not preclude the parties from negotiating further if both agree. New bargaining strategies, including collaborative or win-win bargaining, would be an exception to the use of a zipper clause. The idea of collaborative bargaining

is that union and management negotiate continually during the year as problems arise.

Maintenance of Standards

Management should avoid a *maintenance of standards* provision. Such a provision is routinely included in most union proposals and incorporates the school district's current practices on a wide range of items, many of which are not mandatory subjects of bargaining. Furthermore, a maintenance of standards provision leaves the district vulnerable to the role of past practice used by grievance arbitrators in settling contract disputes. It is the antithesis of a management rights provision and a zipper clause.

An example of a maintenance of standards provision is the following:

> All conditions of employment, including teaching hours, extra compensation for work outside regular teaching hours, relief periods, leaves and general working conditions shall be maintained at not less than the highest minimum standards, provided that such conditions shall be improved for the benefit of teachers, as required by the express provisions of this agreement. The agreement shall not be interpreted or applied to deprive teachers of professional advantages heretofore enjoyed, unless expressly stated herein (5, p. 22).

Management should avoid such a provision.

Just Cause

The term just cause is found in numerous collective bargaining agreements in public education and is routinely included in most union proposals. There is a danger in using such a term, from management's standpoint, because just cause has no clear definition. If a collective bargaining agreement has binding arbitration as the last step in the grievance procedure, then an arbitrator will decide what the term means. The arbitrator's interpretation of the term may be different from what management had intended. For example, suppose a collective bargaining agreement contained the following provision: "No teacher will be disciplined without just cause." What does just cause mean in this case? It will likely mean something different to management than to employees. The

point is that the meaning of just cause must be spelled out clearly somewhere in the contract or eliminated entirely.

Reduction in Force

Most all collective bargaining agreements have some form of *reduction in force* (RIF) provision. Seniority, or length of continuous service within a certificated field, is the key factor used in employee layoff and recall. Some agreements allow for bumping, which means that teachers laid off in one certificated field may replace another teacher in another certificated area who has less seniority in the field than the bumping teacher. A few RIF provisions stress other factors such as affirmative action and teacher merit. Such provisions are more favorable to management but are opposed by most teachers' unions.

Wages and Benefits

Much time at the bargaining table is devoted to wage increases and fringe-benefit improvements. Wage and salary increases are often stated as across-the-board salary increases for steps on a lock-step salary schedule and *cost-of-living adjustments* (COLA) based on the Consumer Price Index in a designated geographic area. Besides salary increases, unions often demand improvements in various fringe benefits such as insurance programs (life, health, and dental); pension plans; merit pay; and sick leave, personal days, and paid religious holidays. Compensation costs in today's school districts often range from 75 to 85 percent of the total budget.

Other Issues

Among other important bargaining issues are grievance arbitration, teacher evaluation, class size, school calendar, and the like. Binding grievance arbitration is not a problem providing the rest of the agreement protects management prerogatives. Likewise, teacher evaluation, class size, and school calendar should not be overly restrictive on the school

district.

The Bargaining Process

To bargain these issues, management and the union each select a negotiating team. Opinions vary widely on who should conduct management negotiations. In small school districts, the superintendent or a board member often conducts negotiations with the teachers' union. Experts advise against this practice, however (6). In large districts, a full-time administrator (director of employee relations, assistant superintendent, or director of personnel) usually serves as chief negotiator. Still other districts employ an outside negotiator - an attorney or labor relations specialist.

One of a superintendent's basic personnel decisions concerning collective bargaining is whether to have a labor relations specialist at the bargaining table to advise the school district or perhaps even represent the district during negotiations. When hiring a labor relations specialist, the superintendent must decide how much authority to give him or her.

One or more building administrators often are included on management's negotiating team. These people live with the contract day to day; they know its weak and strong points; they will administer the new agreement; and they will likely give the contract greater support if they can participate in the changes made in it. The union team generally consists of the local union president and other members of the local membership. Its team may also include an attorney or a labor relations specialist from a regional unit who negotiates for other teachers' unions in the region.

Once each side has selected its negotiating teams, the bargaining process begins. The bargaining takes place in face-to-face meetings between management and union representatives during which numerous proposals and counter proposals are exchanged.

Several rounds of negotiations may be needed to reach agreement on all issues. When the two parties agree on the issues, a new negotiated contract is presented to the union membership and the board for a ratification vote. If both parties approve the agreement, it goes into effect. If they reject the agreement, each goes back to the bargaining table for another round of negotiations.

An *impasse* is said to exist when both parties are unable to reach agreement on a contract. State procedures vary when the union and the school board are deadlocked in negotiations. Most states have some provision for resolving impasses. Some states, like Wisconsin, have developed a procedure for resolving impasses. The procedure involves the following three steps:

1. *Mediation.* The two contending parties meet with a neutral third person who attempts to persuade them to settle the remaining issues through discussion and by proposing compromise provisions to the contract. The mediator acts as a facilitator, however, and has no legal authority to force the parties to accept the suggestions offered.
2. *Fact Finding.* The state appoints a group or committee to investigate and report the facts that are presented by each party. The fact-finding committee's recommendations are generally made public, which places additional pressure on the parties to come to agreement.
3. *Arbitration.* If the parties are still at an impasse, state law may require the union and the school board to submit to arbitration or binding arbitration. Guidelines for teachers' contracts in Wisconsin, for example, stipulate that arbitrators must choose the proposal of either the school board or the teachers' union, but not a compromise solution. This forces the two contending parties to bring their contract proposals closer

together. The result has been a decrease in teacher strikes in Wisconsin (7).

Bargaining Tactics

Negotiators use a number of tactics to improve their bargaining. Four tactics that are typically used are counterproposals, tradeoffs, the caucus, and costing proposals (3, 8, 9).

Counterproposals

Collective bargaining consists of the exchange of proposals and counterproposals in an effort to reach settlement between the negotiating parties. A proposal is an offer presented by one party in negotiations for consideration by the other party. A *counterproposal*, which is designed to bring the parties closer together on an issue, is an offer suggested as an alternative to the previous proposal by the other party. Because it is the union that is seeking improved conditions of employment, it introduces the majority of proposals. Generally, management responds to the union's demands through counterproposals. Actually, there are at least two advantages to this approach for management: (1) The party that moves first on an issue is usually at a disadvantage, for he invariably reveals some information helpful to the other negotiator; and (2) the union, as the initiating party, is forced to work for every concession it gets.

Tradeoffs

Another bargaining tactic is the *tradeoff*, which is giving one issue in return for another. For example, the tradeoff process works as follows: A teachers' union will make a number of proposals, such as (1) fair share, (2) salary increase, (3) increased sick leave, (4) increased personal days, (5) extra holiday(s), (6) hospitalization, (7) life insurance, (8) dental insurance, (9) maternity leave, (10) binding arbitration of grievances, (11) past practice provision, (12) reduction in force procedures, (13) teacher evaluations, (14) class

size, (15) school calendar, and the like. Management then responds by stating that it will grant a 5 percent salary increase if the union withdraws its proposals for increased sick leave and personal days, hospitalization, life insurance, and dental insurance. Further, management will grant the past practice clause if the union drops its request for binding arbitration of grievances. All proposals are "packaged" in this manner until the teacher's union and the school board reach a settlement. While neither party wants to give up its item, each may perceive the exchange as a reasonable compromise.

Caucus

A basic principle of negotiating is that only one person speaks at the bargaining table - the chief negotiator. The other members of the bargaining team must remain quiet. Remaining quiet at the bargaining table can be a frustrating demand for the other members of the bargaining team. A caucus is a private meeting of a bargaining team to decide what action to take on a particular phase of negotiations. It provides an opportunity to get needed input from other team members and to release built-up tensions that arise during stressful negotiations.

Costing Proposals

All proposals in collective bargaining have direct, hidden, and administrative costs. Management must know the cost of all union proposals. Therefore, costing proposals is another important bargaining tactic.

Preparation for this phase of bargaining should be a continual process throughout the school year. Such an approach will avoid errors made in costing proposals hastily during the heat of negotiations. The logical department in a school district to maintain a data bank and generate data for costing proposals is the business office. This office can

then provide a database to the board's negotiating team at the beginning of the bargaining process.

The following guidelines for costing proposals are recommended (3, 9):

1. *Cost Proposals Accurately.* Typically, the union will request copies of all cost data that management prepares. Management can expect distribution of part or all of the data supplied. Therefore, prepare cost data carefully. All calculations must withstand the scrutiny of the public, a mediator, a fact-finding committee, or an arbitrator.

2. *Cost Proposals Separately.* Cost each union proposal separately. For example, the estimated cost of increasing the number of personal leave days must be costed independently of a proposal for increasing the number of sick days. Each must be based on historical data and cost projections.

3. *Cost Proposals from Management's Viewpoint.* Prepare costings from management's point of view. For example, proposals to reduce services must consider either the cost of replacing those services or the economic loss resulting from not having those services performed. In one school district in a Midwestern state, a teachers' collective bargaining agreement stipulated that high school English teachers were required to teach only four classes a day (not exceeding twenty-five students in a class) in order to alleviate the heavy load of correcting daily written assignments. All other high school teachers in the district taught five classes a day. Because there were twenty-four high school English teachers in the district at an average salary of $40,000 a year, this provision in the contract cost the school district $192,000 a year ($8000 x 24).

4. *Cost Proposals as of a Common Date.* Base all costings on data gathered as of a common date. The usual cycle used in school districts is the fiscal year beginning July 1.

5. *Analyze Comparable Data from Neighboring Organizations.* The board's chief negotiator must be able to analyze comparable data from neighboring school districts. For instance, cost data from neighboring school districts must not be considered in isolation. Public school financing is tricky business and comprises numerous factors. The personnel practices and curriculum of each situation are different. While the salary schedule in one district may be better than that in another, the work load in the latter district may be less demanding (e.g., see number 3). Or the salaries in the neighboring district may be distributed differently - higher at the top of the scale but lower at the bottom, for example. Therefore, the board's chief negotiator must be thoroughly familiar with the collective bargaining agreements in neighboring districts. It is a natural tendency for the teachers' union to seek the best of both worlds.

6. *Supply Specifically Requested Information Only.* Cost data should be pertinent to each proposal. Only management's chief negotiator should be provided with the raw data that was used to prepare summaries. Related data may suggest counterproposals. Never distribute raw data to the union and supply only specifically requested information.

7. *Provide Management's Negotiating Team with a Budget Projection.* Provide management's negotiating team with a budget projection at the start of bargaining. The document can be used to set the tentative limits on the chief negotiator. The budget projections must provide a minimum and several alternatives, including factors that

might influence the final budget.

The following are some important factors that influence a school district's final budget (9, 10, 11). This information should be part of a school district's data bank. Such cost data can assist management's bargaining team in costing proposals.

- *Salary*

  Salary schedules and placement of teachers (see Table 1)

  Insert Table 1 about here

  Average salary of newly hired teachers

  Average base salary of teachers, by school, level, department

  Contract salaries distribution

  Past record of salary schedule improvements (dollar amount and percentage)

  Total cost of past schedule improvements

  Past record of change in the salary schedule (steps and lanes)

  Projected cost: normal increment, $100 on base schedule, 1 percent schedule increase

- *Fringe Benefits*

  Fringe benefits as percentage of salaries paid

  Cost of fringe benefits per new position

  Leave history: policy and record

  Separation pay: number of individuals, per diem rate, annual rate, average pay

  Sabbatical leave: granted, denials, costs, subsequent separations

  Retirements: mandatory versus actual, reason for retirement

- *Staffing*

  Number of employees

  Staffing ratios by school, level, department

  Recruitment history: applicants, offers, acceptances

  Separation history: number, reason, scale placement, turnover experience

  General statistics: age, gender, race, marital status of employees

  Scale placement: academic advancement record, payment for graduate credits, merit pay

- *Administration*

  Cost of recruitment

  Cost of selection

  Cost of training

  Cost of basic supplies and equipment for new employees

  Cost of negotiations

  Budget history/forecasting

  Expenditure history

  Enrollment history and projections

  Per-pupil cost history

  Reserve trends/forecasting

  Building factors affecting conditions of employment

New Bargaining Strategies

Currently, forty-one of the fifty states permit teachers to bargain collectively with school boards. Where such bargaining is allowed, almost all school districts employ traditional or adversarial bargaining. In recent years, a new unionism, one that connects teacher

participation in educational decisions to taking responsibility for outcomes, has become apparent. Studies of a number of collaborative efforts in union-management relations describe reform initiatives in Rochester, Pittsburgh, Cincinnati, Glenview, IL, Greece, NY, Jefferson County, KY, and other cities (12). This research describes professional unionism and how it contrasts sharply with the beliefs and practices of traditional industrial unionism. (See Table 2.)

Insert Table 2 about here

One consequence of professional unionism is the emergence of a new mode of principal leadership. While they vary in personal style, gender, and ethnicity, professional unions share similar management styles. They empower the people with whom they work. They use a hands-on approach. They are entrepreneurs; they gather and redistribute resources and encourage others to do so. They abide by a common realization that one leads best by developing the talent of others and gaining commitment rather than compliance with organizational rules.

Consistent with professional unionism is collaborative bargaining (also known as win-win bargaining). Typically, collaborative bargaining focuses on ongoing problem solving rather than dealing with a buildup of issues presented at the bargaining table. Both management and union keep a "tickler file" of problems encountered in administering the current contract. Joint committees deal with the problems encountered. Then when contract language is finally discussed, the parties present specific notes to support their positions. Both parties establish agreed-on ground rules and specific time limits for

negotiations, and write trust agreements and memoranda of understanding, and carefully select respected, credible members of negotiating teams. These procedures can help establish trust and a sense of collaboration to solve mutual problems throughout the school year and at the bargaining table.

Conclusion

Collective negotiations by teachers emerged as a new factor in human resources management in the early 1960s and has become an increasing concern to teachers, administrators, and school board members in the twenty-first century. Today, forty-one states have enacted statutes permitting public school employees to bargain collectively with boards of education, and over 80 percent of the nation's teachers are covered by negotiated agreements. In addition to certificated employees, noncertificated groups are demanding the right to negotiate with management as well. Thus, many principals today work with employee groups who are represented by unions.

For many principals in unionized school districts, the human resources management function is largely composed of following policies and procedures stipulated in the negotiated contract. Decisions about salaries and employee benefits, hours and work loads, transfers, reduction in force, and disciplinary procedures are no longer unilateral prerogatives of principals but fall within the union's province. Such decisions are substantially made at the time the collective bargaining agreement is negotiated. Thus, the negotiated contract constitutes a major influence on the day-to-day operation of a public school as well as the long-term activities of the school district.

An ineffective principal can harm union-management relations more than any level of administration, because she is the first-line administrator to most school employees.

Good relations between and among the principal and her subordinates in the day-to-day operation of the school is likely to result in a favorable outcome for management at the bargaining table. Changes in the union contract(s) can be agreed on that not only improve the school's productivity but also limit undue constraints placed on principal's decision-making options during the administration of the negotiated contract. In addition, the new unionism that has emerged in recent years can help establish trust and a sense of collaboration to solve mutual problems throughout the school year and at the bargaining table.

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Table 1 Salary Schedule Scattergram for a Hypothetical School District

Step	B.A.	No. of Staff	Cost	Step	M.A.	No. of Staff	Cost	Step	Ph.D.	No. of Staff	Cost
1	$30,000	2	$60,000	1	$31,000	1	$31,000	1	$32,500		
2	30,500			2	32,000	2	64,000	2	34,000		
3	31,000			3	33,000	2	66,000	3	35,500		
4	31,500	2	63,000	4	34,000	4	136,000	4	37,000		
5	32,000			5	35,000	2	70,000	5	38,500		
6	32,500			6	36,000	3	108,000	6	40,000	1	40,000
7	33,000	2	66,000	7	37,000			7	41,500		
8	33,500	3	100,500	8	38,000	2	76,000	8	43,000		
9	34,000	1	34,000	9	39,000	1	39,000	9	44,500		
10	34,500	2	69,000	10	40,000			10	46,000		
11	35,000			11	41,000	3	123,000	11	47,500		
12	35,500	2	71,000	12	42,000	8	336,000	12	49,000		
13	36,000	1	36,000	13	43,000	1	43,000	13	50,500		
14	36,500	2	73,000	14	44,000	5	220,000	14	52,000	1	52,000
15	37,000	5	185,000	15	45,000	3	135,000	15	53,500		
Totals		22	$1,657,500			37	$1,447,000			2	$92,000

Total number of teachers: 61

Total of teachers' salaries: $2,296,500

Average teacher salary: $37,648

Table 2 Contrasts Between Industrial and Professional Unionism

Industrial-Style Teacher Unionism	The Emerging Union of Professionals
Emphasizes the separateness of labor and management:	**Emphasizes the collective aspect of work in schools:**
▪ Separation of managerial and teaching work	▪ Blurring the line between teaching and managerial work through joint committees and lead teacher positions
▪ Separation between job design and its execution	▪ Designing and carrying out school programs in teams
▪ Strong hierarchical divisions	▪ Flattened hierarchies, decentralization
Motto: "Boards make policy, managers manage, teachers teach."	*Motto: "All of us are smarter than any of us."*
Emphasizes adversarial relationships:	**Emphasizes the interdependency of workers and managers:**
▪ Organized around teacher discontent	▪ Organized around the need for educational improvement
▪ Mutual deprecation—lazy teachers, incompetent managers	▪ Mutual legitimation of skill and capacity of management and union
▪ Win/lose distributive bargaining	▪ Interest-based bargaining
▪ Limited scope contract	▪ Broad scope contract and other agreements
Motto: "It's us versus them."	*Motto: "Be hard on the problem, not on each other."*
Emphasizes protection of teachers:	**Emphasizes protection of teachers:**
▪ Self-interest	▪ Combination of self-interest and public interest
▪ External quality control	▪ Internal quality control
Motto: "Any grievant is right."	*Motto: "The purpose of the union is not to defend its least competent members."*

Source: Adapted from Charles T. Kerchner, "Building the Airplane as It Rolls Down the Runway," *School Administrator,* 10 (1993): 10. Used by permission.

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